



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference : **LON/00BB/HMK/2018/0018**

Property : **26 Atherton Road, Forest Green,
London E7 9AJ**

Applicant : **Mr Michael Williams**

Representative : **In person**

Respondent : **Let Sell Property Limited**

Representative : **MrM Younis, director of Let Sell
Limited with Mr Y Mohamed,
husband of freeholder**

Type of application : **Application for a Rent Repayment
Order - Section 73 of the Housing Act
2004 licence for house in multiple
occupation**

Tribunal member(s) : **Tribunal Judge Dutton
Mrs H C Bowers BSc MSc MRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **25th July 2018**

DECISION

The Tribunal determines that the sum payable by the Respondent under the provisions of a Rent Repayment Order (RRO) in respect of the property, being a room in a ground floor flat at 26 Atherton Road, Forest Green, London E7 9AJ (the Property) to the Applicant is £2,200 for the reasons set out below. Such sum is to be paid within 28 days of the date of the issue of this decision.

BACKGROUND

1. The Tribunal received an application for a RRO from the Applicant Mr Michael Williams on 13th April 2018. The application indicated that the Respondent, Let Sell Property Limited, who was the landlord on a tenancy agreement produced to us, had been convicted of an offence under section 72(1) and (6) of the Housing Act 2004 (the Act). A memorandum of conviction from the Thames Court Magistrates was produced showing a conviction on 7th December 2017 with the period for which the offence had been committed shown as 8th March 2016 to 12th August 2017. A fine of £10,000 had been imposed with costs. The memorandum records that the Respondent was represented and had pleaded guilty.
2. In addition to this offence it was noted that the Respondent had also been convicted of an offence under section 234 of the Act and was fined a further sum of £5,000.
3. The matter came before us for hearing on 25th July 2018. Prior to the hearing we had received bundles from both parties. The Applicant's bundle included the application, the certificate of conviction and proof of payment. In addition we had, what purported to be a copy of the Applicant's letting agreement in respect of Room 2 Ground Floor flat at the 26 Atherton Road. This showed a commencement date of 1st September 2014 with an end date of 28th February 2015. The recorded rent is £560 per calendar month. It would seem that the Applicant has held over under this agreement and the rent has not been increased during the period of his occupancy, which continued at the date of the hearing.
4. In addition to the initial bundle we were also provided with papers responding to the matters raised by the Respondent in its bundle. We noted all that was said.
5. The Respondent had provided a bundle of papers which included witness statements from Mr Younis, a director of the Respondent company, Mr Yunus Mohamed, the husband of the freeholder, both of whom attended the hearing and a statement from Mrs Mohamed, the freeholder, who did not attend. Again we noted all that was said.
6. At the hearing Mr Williams told us of the problems he had dealing with the Respondent and relating to the Property. This included the lack of access to the rear garden area, which was, we were told still used for storing building materials, although had been the subject of an attempted clean up. It was clear from his evidence that Mr Williams considered that he was not dealt with appropriately by the Respondent and had been the subject of attempts to 'unlawfully' evict him. He sought repayment of 12 months rent because he was not receiving 'adequate service for what he

was paying for'. His initial view was that he was entitled to 12 months repayment from 8th March 2016, being the date it is said the offence commenced.

7. He confirmed that he was paying £560 per calendar month and that this rent had not been increased since he took occupation in 2014. He could not produce evidence that the offence had continued beyond the date recorded in the memorandum of conviction, namely 12th August 2017.
8. For the Respondent Mr Younis told us that he managed the Property for Mrs Mohamed, the freeholder and that their agreement was that they received a fee of 7% of the letting income. For this fee they represented themselves as the landlord and dealt with all aspects, including Court matters. It did not seem, however, that they had assisted in respect of the licensing of the Property. On that point we had in the bundle copies of two licences. One was dated 30th May 2013 made under the provisions of s88 of the Act (selective licensing) and the other under s64 of the Act dated 17th May 2018 but appearing to be for a period running from 1st January 2013 to 21st December 2022. We suspect this is a typographical error and the start date should be 1st January 2018. This is consistent with that which Mr Younis told us, namely that an application for the correct licence had been made on 5th December 2017.
9. Mr Younis accepted that the Property had no appropriate licence until the application was made on 5th December 2017 and that therefore the period for which an offence was being committed would appear to be from 8th March 2016 to 5th December 2018, relying on the provisions of s74(6)(a) and 72(4)(b) of the Act.
10. We also heard from Mr Mohamed who provided some information, without supporting papers it must be said, of the costs he was required to defray in respect of services, cleaning and insurance for the Property, or more particularly the flat on the ground floor of which Mr Williams room forms part.

FINDINGS

11. In reaching our decision we have considered the provisions of sections 72, 73 and 74 of the Act. In particular section 73(8), 74(6) – (8), details of which are set out below.
12. In this case there is no doubt that the Respondent was convicted of an offence under s72(1) of the Act. As a consequence it is subject to the possibility of a RRO being made. The Act states that the period for which an RRO can be made for an occupier is the period of 12 months from the date of the Application, which was received at the Tribunal on 13th April 2018. Accordingly the maximum period for which an order could be made is back to 14th April 2017. The memorandum of conviction records a period for the commission of the offence at the time it came before the Court from 8th March 2016 to 12th August 2017. However, we accepted

the response by Mr Younis that in fact the commission of the offence ran until the application for a licence, which we again accepted was 5th December 2017.

13. Accordingly applying the provisions of s74(8), which limits the period for which a RRO can apply to 12 months from the date of the Application, we find that the relevant period is 14th April 2017 to 5th December 2017, being 235 days.
14. The rent paid is agreed at £560 per calendar month. This gives a daily rate of 18.41p and for the total period an amount of £4,326.35.
15. Under the provisions of section 74(5) we must consider a number of issues to enable us to determine what we consider to be a reasonable amount required to be paid. These are set out in s74(6) and include the conduct of the parties and the Respondent's financial circumstances. We are satisfied on the matters covered by s74(6) (a) – (c).
16. As to conduct there was nothing before us to suggest that Mr Williams had behaved in a way which we should consider. There was a cross allegation of common assault involving Mr Williams and Mr Hotalwala, Mr Younis' co director but we do not consider that relevant. In so far as the Respondent is concerned we noted the conviction relating to the condition of the rear garden and the allegations that attempts at unlawful eviction had been made. We were told that a notice under section 21 of the Housing Act 1988 had been served but we did not consider it necessary to go into that aspect. We have considered those matters but again they did not bear on our decision.
17. What was of relevance was the fine imposed at the Magistrates Court, initially totalling £15,000, with costs but which we were told by Mr Younis had been reduced on appeal to a total fine of £5,000. In addition the financial position of the Respondent should be considered. We noted that although the turnover for the year ending 31st August 2017 was just under £277,000, the profit, after tax was only £12,914.
18. We have noted that Mr Williams, despite his complaints, appears to enjoy living at the property. Taking these matters into account we have concluded that a reasonable sum to award in respect of the RRO, payable to Mr Williams should be £2,200, or approximately half the maximum amount. Such sum should be paid within 28 days.

Tribunal Judge Dutton

25th July 2018

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

The Relevant Law

S72 Offences in relation to licensing of HMOs

- (1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see [section 61\(1\)](#)) but is not so licensed.
- (2) A person commits an offence if-
 - (a) he is a person having control of or managing an HMO which is licensed under this Part,
 - (b) he knowingly permits another person to occupy the house, and
 - (c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.
- (3) A person commits an offence if-
 - (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with [section 67\(5\)](#), and
 - (b) he fails to comply with any condition of the licence.
- (4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time-
 - (a) a notification had been duly given in respect of the house under [section 62\(1\)](#), or
 - (b) an application for a licence had been duly made in respect of the house under [section 63](#), and that notification or application was still effective (see subsection (8)).
- (5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse-
 - (a) for having control of or managing the house in the circumstances mentioned in subsection (1), or
 - (b) for permitting the person to occupy the house, or

- (c) for failing to comply with the condition, as the case may be.
- (6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding £20,000.
- (7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (8) For the purposes of subsection (4) a notification or application is "effective" at a particular time if at that time it has not been withdrawn, and either-
 - (a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or
 - (b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.
- (9) The conditions are-
 - (a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of a residential property tribunal) has not expired, or
 - (b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.
- (10) In subsection (9) "relevant decision" means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

S73 Other consequences of operating unlicensed HMOs: rent repayment orders

- (1) For the purposes of this section an HMO is an "unlicensed HMO" if-
 - (a) it is required to be licensed under this Part but is not so licensed, and
 - (b) neither of the conditions in subsection (2) is satisfied.
- (2) The conditions are-
 - (a) that a notification has been duly given in respect of the HMO under section 62(1) and that notification is still effective (as defined by section 72(8));
 - (b) that an application for a licence has been duly made in respect of the HMO under section 63 and that application is still effective (as so defined).
- (3) No rule of law relating to the validity or enforceability of contracts in circumstances involving illegality is to affect the validity or enforceability of-
 - (a) any provision requiring the payment of rent or the making of any other periodical payment in connection with any tenancy or licence of a part of an unlicensed HMO, or
 - (b) any other provision of such a tenancy or licence.
- (4) But amounts paid in respect of rent or other periodical payments payable in connection with such a tenancy or licence may be recovered in accordance with subsection (5) and section 74.
- (5) If-
 - (a) an application in respect of an HMO is made to a residential property tribunal by the local housing authority or an occupier of a part of the HMO, and
 - (b) the tribunal is satisfied as to the matters mentioned in subsection (6) or (8), the tribunal may make an order (a "rent repayment order") requiring the appropriate person to pay to the applicant such amount in respect of the housing benefit paid as mentioned in subsection (6)(b), or (as the case may be) the periodical payments paid as mentioned in subsection (8)(b), as is specified in the order (see section 74(2) to (8)).
- (6) If the application is made by the local housing authority, the tribunal must be satisfied as to the following matters-
 - (a) that, at any time within the period of 12 months ending with the date of the notice of intended proceedings required by subsection (7), the appropriate person has committed an offence under section 72(1) in relation to the HMO (whether or not he has been charged or convicted),
 - (b) that housing benefit has been paid (to any person) in respect of periodical payments payable in connection with the occupation of a part or parts of the HMO during any period during which it appears to the tribunal that such an offence was being committed, and
 - (c) that the requirements of subsection (7) have been complied with in relation to the application.

- (7) Those requirements are as follows-
- (a) the authority must have served on the appropriate person a notice (a "notice of intended proceedings")-
 - (i) informing him that the authority are proposing to make an application under subsection (5),
 - (ii) setting out the reasons why they propose to do so,
 - (iii) stating the amount that they will seek to recover under that subsection and how that amount is calculated, and
 - (iv) inviting him to make representations to them within a period specified in the notice of not less than 28 days;
 - (b) that period must have expired; and
 - (c) the authority must have considered any representations made to them within that period by the appropriate person.
- (8) If the application is made by an occupier of a part of the HMO, the tribunal must be satisfied as to the following matters-
- (a) that the appropriate person has been convicted of an offence under section 72(1) in relation to the HMO, or has been required by a rent repayment order to make a payment in respect of housing benefit paid in connection with occupation of a part or parts of the HMO,
 - (b) that the occupier paid, to a person having control of or managing the HMO, periodical payments in respect of occupation of part of the HMO during any period during which it appears to the tribunal that such an offence was being committed in relation to the HMO, and
 - (c) that the application is made within the period of 12 months beginning with-
 - (i) the date of the conviction or order, or
 - (ii) if such a conviction was followed by such an order (or vice versa), the date of the later of them.
- (9) Where a local housing authority serve a notice of intended proceedings on any person under this section, they must ensure-
- (a) that a copy of the notice is received by the department of the authority responsible for administering the housing benefit to which the proceedings would relate; and
 - (b) that that department is subsequently kept informed of any matters relating to the proceedings that are likely to be of interest to it in connection with the administration of housing benefit.
- (10) In this section-
- "the appropriate person", in relation to any payment of housing benefit or periodical payment payable in connection with occupation of a part of an HMO, means the person who at the time of the payment was entitled to receive on his own account periodical payments payable in connection with such occupation;
 - "housing benefit" means housing benefit provided by virtue of a scheme under section 123 of the Social Security Contributions and Benefits Act 1992 (c. 4);
 - "occupier", in relation to any periodical payment, means a person who was an occupier at the time of the payment, whether under a tenancy or licence or otherwise (and "occupation" has a corresponding meaning);
 - "periodical payments" means periodical payments in respect of which housing benefit may be paid by virtue of regulation 10 of the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971) or any corresponding provision replacing that regulation.
- (11) For the purposes of this section an amount which-
- (a) is not actually paid by an occupier but is used by him to discharge the whole or part of his liability in respect of a periodical payment (for example, by offsetting the amount against any such liability), and
 - (b) is not an amount of housing benefit,
- is to be regarded as an amount paid by the occupier in respect of that periodical payment.

S74 Further provisions about rent repayment orders

- (1) This section applies in relation to rent repayment orders made by residential property tribunals under section 73(5).
- (2) Where, on an application by the local housing authority, the tribunal is satisfied-

- (a) that a person has been convicted of an offence under section 72(1) in relation to the HMO, and
- (b) that housing benefit was paid (whether or not to the appropriate person) in respect of periodical payments payable in connection with occupation of a part or parts of the HMO during any period during which it appears to the tribunal that such an offence was being committed in relation to the HMO, the tribunal must make a rent repayment order requiring the appropriate person to pay to the authority an amount equal to the total amount of housing benefit paid as mentioned in paragraph (b).
This is subject to subsections (3), (4) and (8).
- (3) If the total of the amounts received by the appropriate person in respect of periodical payments payable as mentioned in paragraph (b) of subsection (2) ("the rent total") is less than the total amount of housing benefit paid as mentioned in that paragraph, the amount required to be paid by virtue of a rent repayment order made in accordance with that subsection is limited to the rent total.
- (4) A rent repayment order made in accordance with subsection (2) may not require the payment of any amount which the tribunal is satisfied that, by reason of any exceptional circumstances, it would be unreasonable for that person to be required to pay.
- (5) In a case where subsection (2) does not apply, the amount required to be paid by virtue of a rent repayment order under section 73(5) is to be such amount as the tribunal considers reasonable in the circumstances.
This is subject to subsections (6) to (8).
- (6) In such a case the tribunal must, in particular, take into account the following matters-
 - (a) the total amount of relevant payments paid in connection with occupation of the HMO during any period during which it appears to the tribunal that an offence was being committed by the appropriate person in relation to the HMO under section 72(1);
 - (b) the extent to which that total amount-
 - (i) consisted of, or derived from, payments of housing benefit, and
 - (ii) was actually received by the appropriate person;
 - (c) whether the appropriate person has at any time been convicted of an offence under section 72(1) in relation to the HMO;
 - (d) the conduct and financial circumstances of the appropriate person; and
 - (e) where the application is made by an occupier, the conduct of the occupier.
- (7) In subsection (6) "relevant payments" means-
 - (a) in relation to an application by a local housing authority, payments of housing benefit or periodical payments payable by occupiers;
 - (b) in relation to an application by an occupier, periodical payments payable by the occupier, less any amount of housing benefit payable in respect of occupation of the part of the HMO occupied by him during the period in question.
- (8) A rent repayment order may not require the payment of any amount which-
 - (a) (where the application is made by a local housing authority) is in respect of any time falling outside the period of 12 months mentioned in section 73(6)(a); or
 - (b) (where the application is made by an occupier) is in respect of any time falling outside the period of 12 months ending with the date of the occupier's application under section 73(5);
 and the period to be taken into account under subsection (6)(a) above is restricted accordingly.
- (9) Any amount payable to a local housing authority under a rent repayment order-
 - (a) does not, when recovered by the authority, constitute an amount of housing benefit recovered by them, and
 - (b) until recovered by them, is a legal charge on the HMO which is a local land charge.
- (10) For the purpose of enforcing that charge the authority have the same powers and remedies under the Law of Property Act 1925 (c. 20) and otherwise as if they were mortgagees by deed having powers of sale and lease, and of accepting surrenders of leases and of appointing a receiver.

- (11) The power of appointing a receiver is exercisable at any time after the end of the period of one month beginning with the date on which the charge takes effect.
- (12) If the authority subsequently grant a licence under this Part or Part 3 in respect of the HMO to the appropriate person or any person acting on his behalf, the conditions contained in the licence may include a condition requiring the licence holder-
- (a) to pay to the authority any amount payable to them under the rent repayment order and not so far recovered by them; and
 - (b) to do so in such instalments as are specified in the licence.
- (13) If the authority subsequently make a management order under Chapter 1 of Part 4 in respect of the HMO, the order may contain such provisions as the authority consider appropriate for the recovery of any amount payable to them under the rent repayment order and not so far recovered by them.
- (14) Any amount payable to an occupier by virtue of a rent repayment order is recoverable by the occupier as a debt due to him from the appropriate person.
- (15) The appropriate national authority may by regulations make such provision as it considers appropriate for supplementing the provisions of this section and section 73, and in particular-
- (a) for securing that persons are not unfairly prejudiced by rent repayment orders (whether in cases where there have been over-payments of housing benefit or otherwise);
 - (b) for requiring or authorising amounts received by local housing authorities by virtue of rent repayment orders to be dealt with in such manner as is specified in the regulations.
- (16) Section 73(10) and (11) apply for the purposes of this section as they apply for the purposes of section 73.